THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 21823 OF 2001

27th September, 2005

Between:

B.Kanakaiah and Others …Petitioners

A N D

1. The Secretary to Government, Government

of A.P., Revenue Department, Secretariat

Buildings, Hyderabad and Others …Respondents

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 21823 OF 2001

ORDER:

1. This writ petition is filed by the petitioners who are three in number, assailing the proceedings No. E2/5465/91, dated 3.8.2001 passed by the Revenue Divisional Officer, Miryalguda-4th respondent herein, where under compensation payable to them has been fixed at Rs. 1466/- per acre.

2. The petitioners owned Ac. 9-20 gts in Survey No. 110 situated at Gajulapuram village. One P. Narsaiah, the father of the 3rd petitioner was the assignee of the land in the year 1950. Petitioners No. 1 and 2 purchased Ac. 5-00 each from the assignee under registered sale deeds dated 24-6-1970 and 30-12-1974 respectively. The land was acquired by the respondents for the purpose of forming Broad Gauge Railway Line. The respondents took possession of the land on 10-10-1980. While passing Award with regard to acquisition of acquired lands, the compensation was not assessed to the lands of the petitioners on the ground that they were assigned land. Accordingly, the Award came to be passed on 20-3-1982 vide proceedings No. A/336/81, fixing the compensation to the lands other than the lands of the petitioners. The petitioners filed W.P.No.9267 of 1993 seeking writ of mandamus directing the respondents to take steps for issuance of notification under Section 4(1) of the Land Acquisition Act in respect of their lands also. The said writ petition along with other writ petitions came to be allowed directing the petitioners to give a representation to the authorities concerned within two months from the date of the receipt of the copy of the order seeking compensation. The relevant portion of the order passed in the said writ petition reads as follows:

> " *In the instant cases, no condition of resumption or acquisition without paying compensation is forthcoming. As such, the principle laid down in the above decision applies to the cases on hand. Hence, we hold the petitioners in all the writ petitions are entitled for compensation.*
>
> *We direct the petitioners to give representations to the authorities concerned without two months from the date of receipt of this order seeking compensation and on receipt of such representations, the authorities shall pass orders awarding compensation within three months thereafter.*
>
> *The writ petitions are accordingly allowed. No costs."*

3. Respondent authorities carried the matter in appeal to the Supreme Court. The SLP filed by the respondent authorities came to be disposed of in view of the writ petitioners expressing their consent to accept the compensation payable as per G.O.Ms.No.1307, dated 23-12-1993. The order passed by the Supreme Court reads as follows:

> "*Learned counsel for the petitioner states that the State shall pay compensation to the respondents, for resuming the land which was assigned to them, according to GO.No. 1307 dated 23-12-1993 . Learned counsel for the respondents agrees to accept compensation under the said G.O. and does not now claim compensation under any other provision of law. In view of this agreement between the parties this Special Leave petition does not survive and the same is disposed of accordingly".*

4. After disposal of the Special Leave Petition, the Revenue Divisional Officer, Miryalguda issued proceedings No. E2/5465/1991, dated 3-8-2001 fixing the compensation of Rs.13,875/-. Ex-gratia amount fixed by the Revenue Divisional Officer, Miryalguda to the lands of each of the petitioners is as follows:

Sl. Name of the Petitioner/ Extent under Ex-gratia

No. Claimant alignment sanctioned

1. Battula Kanakaiah, s/o Kotaiah Ac. 3.34 gts. Rs.5,623.00

(P.No.1 in WP No. 9267/93,)

R/o Gajalapuram

2. Polangi Venkataiahs/oGupthaiah Ac. 3.22 gts. Rs.5,185.00

(P.No.2 in WP No.9267/93)

3. Panugundla Narsaiah s/o Ac. 2.04 gts. Rs.3,067.00

Mattaiah (P.No. 3 in WP No.

9267/93 r/o Gajhalapuram

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Total: Ac.9.20 Gts. Rs.13,875.00

5. Petitioners received compensation on 14-8-2001. The writ petition has been filed questioning the fixation of the amount payable to the petitioners as exgratia in pursuance of the G.O.Ms.No. 1307. According to the petitioners, they are entitled to market value of the land @ Rs.20,000/- per acre as fixed by the Civil Court and confirmed by this Court as well as the Supreme Court and solatium at 30% besides interests thereon. According to the petitioners, they have to get Rs. 11,38,380/- if the market value is calculated at Rs.20,000/- per acre and Rs. 77,727.14 if the market value is calculated at Rs. 1590/-. Both the calculations memos have been placed on records by the petitioners on 23-8-2005 before this Court.

6. Respondents filed counter affidavit. One R.Hari Singh the Revenue Divisional Officer, Miryalguda, Nalgonda district has sworn to the counter affidavit. It is stated in the counter affidavit that the market value has been fixed as per G.O.Ms. No.1307, dated 23-12-1993 and total amount payable as ex-gratia has been arrived at accordingly. It is further stated that the petitioners are not entitled to additional market value and interest and what is required to be paid under G.O.Ms. No.1307 is Market Value and 15% solatium thereon. It is trite to refer paras 4 and 5 of the counter affidavit and it is thus : -

> "*In reply to para-4 of the affidavit, it is submitted that it is a fact that as per the orders contained in the G.O.Ms. No.1307 dated 23-12-1993 market value as on the date of dispossession has been arrived into @ Rs. 1270/- per acre and an amount equalent to 15% for the lands resumed prior to 30-4-1982 on the market value payable under Sec. 23 (2) of the Land Acquisition Act which is payable has also been considered for inclusion in the total ex-gratia payable to the assignees as solatium. Accordingly, the total amount arrived for Rs. 13,875/- for Ac. 9.20 gts has been paid to the assignees on 14-8-2001.*
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> *In reply to para-5 of the affidavit, it is submitted that it is a fact that the Sy.No.110 Government assigned land is inferior quality when compared to the other patta land acquired under the Land Acquisition Act. It is not correct to say that to pay the compensation on par with the patta lands. The Sy.No.110 is inferior quality in all aspects and also Government assigned land. Hence, payment of compensation on par with patta lands is denied".*

7. Heard the learned counsel for the petitioners and learned Government pleader for Land Acquisition appearing on behalf of the respondents.

8. The learned counsel for the petitioners submits that the lands of the petitioners along with the lands of some others were taken possession by the Government for formation of new Railway Bridge from Bibinagar to Nadigudem on 10-10-1980 and a reference was made to the Civil Court in respect of patta lands under Section 18 of the Land Acquisition Act and the Civil Court granted compensation @ Rs. 20,000/- per acre which came to be confirmed by the High Court, as well as the Supreme Court. Therefore, the petitioners are entitled to claim compensation at the same rate. He further submits that fixation of the compensation by the 4th respondent @ Rs. 1270/- per acre is wholly unjustifiable and irrational and therefore, the proceedings issued by the 4th respondent in fixing the compensation @ Rs. 1270/- are liable to be quashed. A further submission has been made even if the compensation as fixed by the 4th respondent is accepted, since the possession was taken on 10-10-1980 the petitioners are entitled to interest on the ex-gratia granted to them @ 9% for one year and thereafter @ 15% up to the date of payment, as provided under Section34 of the Land Acquisition Act, 1994.

9. The learned Government Pleader for land Acquisition appearing for the respondent submits that the petitioners agreed to receive the compensation as per G.O.Ms. No. 1307 Revenue (Assignment-I) Department dated 23-12-1993 and therefore, ex-gratia payable to them is to be fixed in accordance with the G.O.Ms.No. 1307 and the ex-gratia so fixed by the 4th respondent is in tune with the said G.O. and therefore, proceeding impugned in the writ petition is legal and proper.

10. It is no more in dispute that the petitioners consented to receive ex-gratia for the land which was taken over by the Government for formation of new railway bridge from Bibinagar to Nadigudem. As per the G.O.Ms.No.1307, the petitioners are entitled to ex-gratia equallent to market value and they are not entitled for making reference under Section 18 and 28-A of the Land Acquisition Act to Court. The G.O. is explicit that they are not also entitled for interest or additional market value under the Land Acquisition Act. To have a clear understanding as to what amount the petitioners are entitled as per G.O.Ms.No.1307, dated 23-12-1993, I deem it appropriate to refer para 5 of the said G.O. and it is thus:

> "*The Government after careful examination of the matter in consultation with the Commissioner of Land Revenue, Irrigation and Command Area Development Department and Finance Department hereby order payment of lumpsum*

exgratia equivalent to the market value, to the assignees, whose lands are resumed for the projects and other public purposes and equivalent to valuation for other private orchards and structures, wells etc., removing the distinction stipulated in para (3) of G.O.Ms.No.428 dated 25-4-1992 to the following conditions:

a. *that the amount is to be treated as exgratia;*

b. *that the assignees would not be entitled for making reference u/s 18 and 28-A of Land Acquisition Act to the courts;*

c. *an amount equivalent to 15% for the lands resumed prior to 30.4.1982 and 30% after that date on the market value payable under Section 23(2) of the L.A. Act may be considered for being included in the total exgratia payable to the assignees as solatium;*

d. *that the assignee will not be entitled for interest or additional market value under the L.A. Act.*

e. *that the above conditions shall be made applicable to all the assigned lands resumed on or after 9.2.1984 (i.e. the date of issue of G.O.Ms. No.180 dated 9.2.1984 in supersession of G.O. Ms. No.43 dated 23.1.1988".*

11. A reading of above referred G.O. gives no room for any doubt that the petitioners are entitled to only market value as exgratia. They are not entitled to market value as fixed by the Civil Courts on reference under Section 18 of the Land Acquisition Act. The Revenue Divisional Officer-4th respondent in the Award proceedings NO. A336/81, dated 20-3-1982 acquisitioned the land into two categories and they are :

I. Dry Dubba Chalka

II. Dry lands mixed with black soil

Survey Nos. 87,88,89, 101,102,103,104 and 111 are under 'A' category. Survey Nos. 97,98 and 99 are under Category 'B'. Market value of 'A' category land has been fixed at Rs. 1,270/- and 'B' category land has been fixed at Rs.1,590/-. The land of the petitioners is in Survey No.110. Since the land of the petitioners is falling nearby 'A' Category land, the 4th respondent is justified in taking the market value at

Rs. 1,270/- per acre. The total amount payable to the petitioners have been arrived at Rs.13,875/- which includes market value plus 15% solatium. Exgratia for assigned land came to be granted under G.O.Ms.No.1307, dated 23-12-1993. The Government took possession of the land on 10-10-1980 for formation of new railway bridge from Bibinagar to Nadigudem. Till the Government issuing G.O.Ms. No. 1307 Revenue Assignment-Department, dated 23-12-1993, payment of compensation to the assigned lands was not permissible. For the first time, the compensation to the assigned lands by way of ex-gratia came to be granted under G.O.Ms. No.1307, dated 23-12-1993. The petitioners became entitled to ex-gratia on the issuance of G.O.Ms. No.1307 dated 23-12-1993 and the amount payable to the petitioners has become due as on that date. Since the possession of the lands has been taken over by the Government in the year 1980 itself i.e. on 10-10-1980 and the amount of ex-gratia payable as per G.O.Ms.No.1307 has not been paid till 14-8-2001, the petitioners are entitled to interest at least from the date on which ex-gratia has become payable to them.

12. In view of the above discussion I find the petitioners are entitled to claim interest @ Rs. 9% from the date of issuance of G.O.Ms. NO. 1307 Revenue (Assignment –I) Department, dated 23-12-1993 to the date of payment i.e. 14-8-2001.

13. Accordingly, the writ petition is disposed of directing the respondents to pay interest at 9% per annum from the date of G.O.Ms. No. 1307 i.e. from 23-12-1993 to the date of payment (14-8-2001) within two months from the date of receipt of a copy of this order. No order as to costs.

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B.Seshasayana Reddy,J.

27th September, 2005.

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